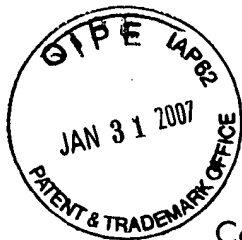


January 29, 2007



Commissioner for Patents
Mail Stop Petitions
P.O. Box 1450
Alexandria, Virginia 22313-1450

**Re: Patent Application for "Stacked Pellet Flare Assembly and
Methods of Making and Using the Same"**
Applicant: David W. Herbage et al.
Attorney Docket No.: A310429.2US

Dear Sir:

I hereby certify that the below listed items are being deposited with the
United States Postal Service :

1. Transmittal letter (1 page);
2. Petition to Withdraw Holding of Abandonment Based on Failure
to Receive Office Action with exhibits (8 pages); and
3. Firm return receipt post card.

Respectfully submitted,

WYATT, TARRANT & COMBS, LLP

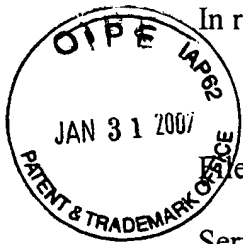
Sarah Osborn Hill

Sarah Osborn Hill
Reg. No. 55,267

SOH/slb
Enclosures

20277199.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Applicant:

David W. Herbage and John Dailey

Filed: **January 23, 2004**

Serial No.: **10/763,789**

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§

Confirmation No.: **7920**

Art Unit: **3641**

Examiner: **Lee, Benjamin P.**

Attorney Docket No.: **A310429.2US**

For: Stacked Pellet Flare Assembly and Methods of Making and Using the Same

Commissioner for Patents
Mail Stop Petitions
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

Dear Sir:

Applicant acknowledges receipt of the Notice of Abandonment issued in the above referenced application on January 18, 2007 for failure to respond to an Office Action mailed on June 7, 2006. Applicant respectfully requests that this holding of Abandonment be withdrawn because Applicant did not receive the Office Action mailed on June 7, 2006 and could not respond.

On or about November 17, 2006, Attorney Sarah Osborn Hill of Wyatt, Tarrant and Combs, LLP received a phone call from Examiner Benjamin P. Lee regarding the above referenced application. Mr. Lee informed Ms. Hill that an Office Action had been mailed on June 7, 2006 and inquired as to the status of the application. Ms. Hill informed Mr. Lee that her office had not received the Office Action of June 7, 2006. In fact, Attorney H. Roy Berkenstock

with Ms. Hill's office filed a Status Request on June 19, 2006. (attached hereto as *Exhibit A*) There was no response to the Status Request. Mr. Lee found the Status Request in the file. He said that he would reissue the June 7, 2006 Office Action.

Later, Mr. Lee called Ms. Hill again and requested that a change of address be filed. He indicated that once this was completed, he would reissue the Office Action. A change of address was filed in the above referenced action on December 4, 2006. The Office Action was never reissued. A little over one month later, a Notice of Abandonment was mailed January 18, 2007.

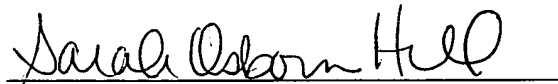
An allegation that an Office Action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and re-mail the Office action. *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971); MPEP 711.03(c) I(A).

The undersigned affirms that the Office Action mailed June 7, 2006 in the above referenced application was never received by Wyatt, Tarrant, & Combs, LLP. The undersigned completed a thorough search of the file related to this application and reviewed all docketing entries related to this application. The results of her search indicate that the Office Action of June 7, 2006 was not received. All correspondence related to this application and all patent applications prosecuted by Wyatt, Tarrant & Combs, LLP Patent Attorneys are routed through a central docketing clerk in the Memphis, Tennessee office. The clerk also conducted a search of this application's file and docket entries related to this application and found no record of the June 7, 2006 Office Action. A printout of the docketing entries related to this application is attached hereto as *Exhibit B*. This document also shows that Wyatt, Tarrant and Combs, LLP never received the June 7, 2007 Office Action.

Accordingly, Applicant has presented the information required to adequately support its allegation that it did not receive the Office Action of June 7, 2006. Applicant respectfully requests that Examiner withdraw the abandonment and reissue the Office Action with a new period of time for response.

If the Examiner feels that a telephone conference with Applicant's attorney would advance the prosecution of the application, she is invited to call the undersigned at 502-562-7319.

Respectfully submitted,

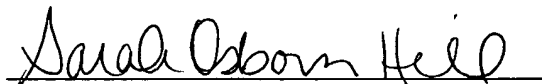


Sarah Osborn Hill
Registration No. 55,267
Date: January 29, 2007

WYATT, TARRANT & COMBS, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee 38120-4367
Telephone: 502.562.7319
Facsimile: 901.537.1010

CERTIFICATE UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service addressed to: Commissioner for Patents, Mail Stop Petitions, P.O. Box 1450, Alexandria Virginia 222313-1450 on this day of January 29, 2007.



Sarah Osborn Hill
Registration No. 55,267
Date: January 29, 2007



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR: David W. Herbage and
John W. Dailey

ATTY DOC#: A310429.2US

SERIAL No.: 10/763,789

ART UNIT: 3641

CONFIRMATION No.: 7920

EXAMINER:

FILING DATE: 1/23/2004

TITLE: "Stacked Pellet Flare Assembly and
Methods of Making and Using the
Same"

STATUS REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
Wyatt, Tarrant & Combs
JUN 19 2006
Contacted by <i>JK</i>
Client No. _____
Master No. _____

Dear Sir:

Applicant respectfully inquires as to the status of the above identified application and would appreciate being informed as to when an Office Action can be expected in this application.

Dated: June 19, 2006

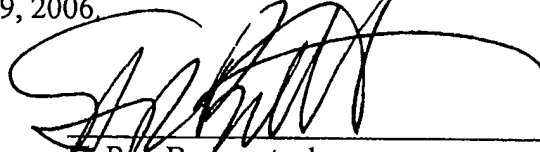
WYATT, TARRANT & COMBS, LLP
1717 Aaron Brenner Drive., Suite 800
Memphis, TN 38120-4367
(901) 537-1000
(901) 537-1010 Fax

Respectfully submitted,

H. Roy Berkenstock
H. Roy Berkenstock
Reg. No. 24,719

CERTIFICATE UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, addressed to Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450, on June 19, 2006.

A handwritten signature in black ink, appearing to read 'H. Roy Berkenstock', written over a horizontal line.

H. Roy Berkenstock

Registration No. 24,719

Date: June 19, 2006



RECEIVED
Wyatt, Tarrant & Combs
JUN 30 2006
Docketed by _____
Client No. _____
Filing No. _____



|||||
H. Roy Berkenstock, Esq.
Wyatt, Tarrant & Combs, LLP
P. O. Box 775000
Memphis, TN 38177-5000

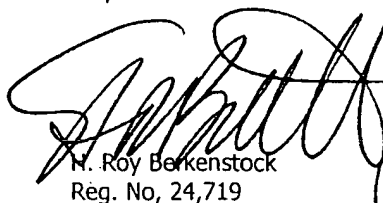
© USPS 2002 recycled

In re: Patent Application Ser No. 10/763,789
The Commissioner for Patents acknowledges receipt of:

1. Transmittal letter;
2. Status Request; and
3. Return receipt postcard.

Mailed First Class Mail, postage prepaid, to, Commissioner for Patents, P. O. Box 1450,
Alexandria, VA 22313-1450, on June 19, 2006

A310429.2US


H. Roy Berkenstock
Reg. No, 24,719



BEST AVAILABLE COPY

Matters Listing with Events

Search for: 310429.000002 Search by: Elite Client Matter Number

Client	Matter Description	Area of Law	Matter ID
Kilgore Flares Company,	U.S. Patent Application for "Stacked Pellet	Patent	A310429.2US

Event Date	Initials	Notes
1/23/2004	RB	Patent application filed (on or after 6/8/1995)
2/23/2004	RB	Postcard: application filed
4/23/2004	RB	Assignment document(s) filed? YES
4/23/2004	RB	Filing receipt received?
4/23/2004	RB	Information Disclosure Statement due (no fee)
4/23/2004	RB	Power of attorney filed?
4/23/2004	RB	Oath or Declaration filed?
7/23/2004	RB	Formal Drawings filed?
1/24/2005	RB	Foreign application filing(s) due-final date
7/25/2005	RB	Publication of patent due
7/25/2005	RB	Status inquiry: application filed 1/23/04
6/19/2006	RB	Status check filed
6/19/2006	RB	Status check
7/19/2006	RB	Confirmation/postcard: status check filed
8/19/2006	RB	Request for status check due
1/18/2007	RB, SH	Notice of Abandonment
3/19/2007	RB, SH	Petition to withdraw holding of Abandonment due-final date
3/19/2007	RB, SH	Petition to revive abandoned application due-final date
1/23/2024	RB	Patent expires (may be eligible for extensions)